

No. 7:09-CR-46-1BO
No. 7:16-CV-122-BO

ORDER

BACKGROUND

DISCUSSION

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136 S. Ct. 1257 (2016). In *Johnson*, the Supreme Court held that the residual clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), is unconstitutionally vague. 135 S.Ct. at 2557. In *Welch*, the Supreme Court held that *Johnson* applies retroactively on collateral review. 136 S.Ct. at 1265.

The government, waiving its procedural defenses, contends that application of *Johnson* and *United States v. Newbold*, 791 F.3d 455 (4th Cir. 2015) to petitioner's criminal history results in insufficient qualifying predicate convictions necessary to be sentenced as an armed career criminal under 18 U.S.C. § 924(e). The Court agrees, and holds that resentencing of petitioner without application of the ACCA is warranted. In light of the foregoing, petitioner's *pro se* claim of ineffective assistance of counsel under *Johnson* is moot and his *pro se* § 2255 motion is DISMISSED.

CONCLUSION

Accordingly, petitioner's amended motion to vacate pursuant to 28 U.S.C. § 2255 [DE 42] is GRANTED, petitioner's sentence is hereby VACATED, and this matter shall be set for resentencing by separate notice. Petitioner's *pro se* § 2255 [DE 38 & 43] is DISMISSED.

SO ORDERED, this 30 day of December, 2016.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE